

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Erie Insurance Property and Casualty Company

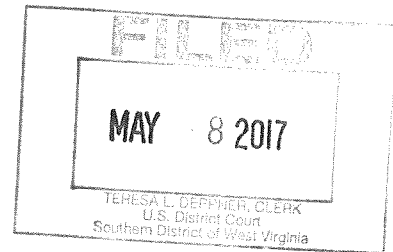
Respondent

V

Civil Action No. 5:01-0513

Harry E. Walkup, Jr.

Plaintiff



ADDITIONAL MEMORANDUM OF LAW

AS RELATES TO MOTION TO VACATE JUDGMENT

ALSO SOME BRIEF COMMENTS RELATING TO ATTORNEY REQUIREMENT, IF
ATTORNEY TRULY NEEDED IN THIS CASE.

- (1) 12-60 Moore's Federal Practice, Civil 60.46. For a decision to be "based on" a prior judgment within the meaning of Rule 60(b)(5), the prior judgment must be a necessary element of the decision, giving rise, for example, to the cause of action or for a successful defense. Lubben v Selective Service Sys. Local Bd. No. 27, 453 F2d 645 (1st 1972) (and not that prior judgment merely supplied precedent for judgment from which relief is sought). Change in law following a judgment not merit relief under Rule 60(b)(5), Lubben, Supra.
- (2) Court's discretion under Rule 60(b)...to do justice in particular case. Manzanares v City of Albuquerque, 628 F3d 1237, 1241-1243 (10th 2010).
- (3) Werner v Carbo, 731 F 2d 204 (4th 1984), in their discussion of Rule 60(b): these grounds for relief often overlap, and it is difficult if not inappropriate in many cases to specify or restrict the claim for relief to a particular itemized ground.
- (4) Rule 60(b) was designed to permit desirable legal objective that cases might be decided on the merits. Patapoff v Vollstedt's, Inc., 267 F 2d 863 (9th 1959).
- (5) FRCP 60(b) designed to address mistakes attributable to special circumstances, and not merely to erroneous applications of law. Russell v Delco Remy, 51 F 3d 746 (7th 1995).
- (6) Rule 60(b) is a rule of equity which attempts to strike proper balance between conflicting principles that litigation must be brought to an end and that justice should be done. United States v Southwest Nat'l. Bank, 598 F 2d 600 (1979).
- (7) Rule 60 should be construed so as to cover all judgments. Fleming v Huebsch Laundry Corp, 159 F2d 581 (7th 1047).

(8) Rule 60 should be liberally construed for purpose of doing substantial justice.

United States v Gould, 301 F2d 353 (5th 1962).

(9) Rule 60: liberally construed in order to provide relief from onerous consequences of defaults and default judgments. Tolson v Hodge 411 F2d 123 (4th 1969).

(10) Rule 60: judgments which are void or are vehicles of injustice not to be left standing. Brennan v Midwestern United Life Ins. Co. 450 F 2d 999 (7th 1971).

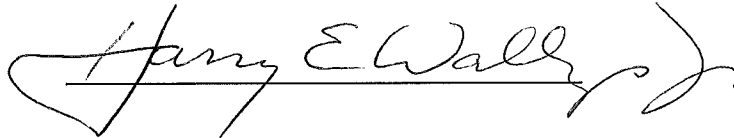
(11) Rule 60: liberal construction, always trying where possible to see that cases are decided on their merits; any doubt should be resolved in favor of application to set aside judgment to end of securing trial upon merits. Huntington Cab Co. v American Fidelity and Casualty Co. 4 FRD 496 (D.W. Va. 1945).

(12) Avoid injustice in light of all facts. RE: Four Seasons Secur. 63 FRD 422 (WD Okla. 1974).

ATTORNEY CONCERNS

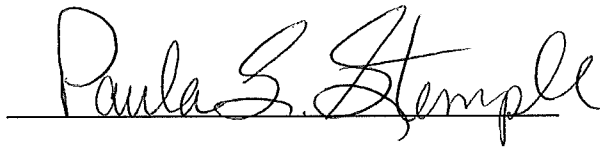
Petitioner continues to get only recorded messages at State Hunter's office in Lewisburg, W.V.. Mr. Hunter is in his 70's and Petitioner is concerned that something may have happened to him. Petitioner hopes that this case is simple enough that perhaps and attorney is unnecessary, but he is not qualified to say for certain. Petitioner prays that no delay be imputed to him over this concern.

The above is true and correct to the best of my knowledge and belief.



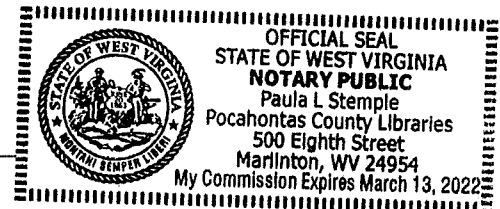
Harry E. Walkup, Jr.

The foregoing acknowledged before me this 5th day of May, 2017.



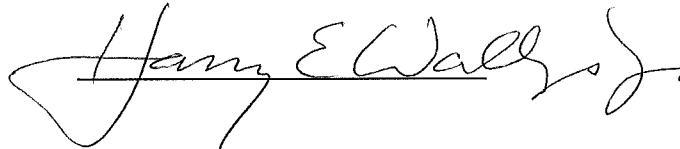
Signature of Notary Public

My commission expires on March 13, 2022



CERTIFICATE OF SERVICE

The foregoing Additional Memorandum of Law pertaining to vacating judgment: a true copy was mailed to the Respondent, Erie Insurance Property and Casualty Co., W.V. Branch, 3700 Poplar Street Suite 200, Parkersburg, W.V. 26101-0162, by Certified Mail, this 5th day of May, 2017.

A handwritten signature in cursive script, reading "Harry E. Walkup, Jr.", written over a horizontal line.

Harry E. Walkup, Jr.

HARRY E.
329 ALLEGHENY AVE
MARLINTON, W.V. 24954



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